State of Michigan

House Committee on Natural Resources

I wish to commend the author and sponsors of SB 1052. The "Beach Grooming" language is long overdue. It is unfortunate that the culture of MDEQ and its predecessors is one of believing themselves to be masters of the population instead of public servants to the taxpayer. This rogue agency ignores case law and constitutional rulings on a regular basis as it reaches for ever more power and control over private property, and thus the lives of property owners.

It is for this reason that I cannot understand, and must protest the inclusion in this bill of MDEQ control over my property up to a fictitious "Regulatory Water Mark". What possible reason could you have to justify this regulatory "Taking"? I do recognize the existence of the Police Power. I also recognize that this power cannot be employed indiscriminately. There must be some overriding public concern to justify its use. As the Supreme Court stated in Hilt v Weber, "The State must be honest". I see no overriding concern in this instance. As the court also said in Hilt v Weber"..@ 225, "Riparian Rights are property, for the taking or destruction of which by the state, compensation must be made". We know that the property in question is not part of the "Public Trust". The Supreme Court in Glass V Goeckle (G v G P21) limited the boundary of the public trust to the Ordinary High Water Mark, which it clearly defined (G v G, P.4) as "where the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristics". They go on in subsequent entries and footnotes to defer to the concept of "moveable freehold", as also applied in Hilt v Weber and to recognize the presence or absence of litter as a marker. They also recognized the normal ebb and flow as the standard to be used, not abnormal occurrences such as storm surges, etc. Their ruling also clearly went on to specify that the Great Lakes Submerged Lands Act, now part of NREPA, does NOT apply to patented lands landward of the OHWM devoting several pages as to "why it does not". The G v G

ruling (pages 41/42) goes so far as to state "We decline to draw, merely for a charade of clarity, a universal line along the Great Lakes without any factual development of the point in the instant case .....we refuse to shift the boundary on the public trust away from the ordinary high water mark.

Given the foregoing, it is clear to me that any diminution of the landowners right to use and dispose of the property between the boundary of the public trust, and the fictitious elevation of your "Regulatory Water Mark" is a taking for which compensation must be made. This would be true, even if there were valid reason for such taking.

The fear, however, of a large monetary judgment against the state as compensation for the Taking is not the reason I would want the legislature to use in deleting this section of the bill. You should simply do it because it is your responsibility to protect the rights of citizens from unnecessary encroachment by any agency of government. You should delete the section because it is just plain wrong.

Failing that, any sense of justice or equity would demand that this bill at least be passed in its present form. Although not optimal, that would bring us back a little closer to constitutional justice.

Thank you for all the good work that you do.

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